GLENN H. JOHNSON
(On Reconsideration)

IBLA 79-102 Decided December 19, 1979

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting coal lease applications M 2542 and M 32133.

Set aside and remanded.

1. Coal Leases and Permits: Applications -- Coal Leases and Permits: Leases

Where BLM has rejected coal lease applications because they do not meet court ordered emergency coal leasing criteria, but, the emergency criteria are no longer in effect and regulations governing a new coal management program have been issued, BLM on remand should determine whether issuance of the leases is appropriate under the new program, giving applicant an opportunity to provide additional information if necessary.

APPEARANCES: Glenn H. Johnson, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

This appeal is brought from a decision of the Montana State Office, Bureau of Land Management (BLM), rejecting appellant's coal lease applications M 2542 and M 32133. The BLM decision was based on Natural Resources Defense Council v. Hughes, 437 F. Supp. 981 (D.D.C. 1977), as amended, 454 F. Supp. 148 (D.D.C. 1978), wherein the Department of Interior was directed as of September 27, 1977, not to grant any lease applications except:

(1) when the proposed lease is required to maintain an existing mining operation (a) at the average annual level of production existing as of September 27, 1977, or (b) to provide reserves necessary to meet binding contracts (excluding letters of intent and memoranda of

understanding) existing on September 27, 1977, and the extent of the proposed lease is not greater than is required to meet criterion (a) or (b) for eight years in the future. * * * or

(2) when the proposed lease is necessary because (a) mining operations existing on September 27, 1977, are being conducted that could remove the coal deposit as part of an orderly mining sequence; and (b) the site location, or physical characteristics are such that removal of the coal reserve sought to be leased, except in conjunction with ongoing operations, would (i) involve costs demonstrably so high that it would not be sufficiently profitable to develop the deposit in the reasonably foreseeable future or (ii) significantly increase environmental damage. This paragraph would not apply if there is any reasonable alternative by which the existing mine could continue operations and the coal deposit subject to the proposed lease could be mined at a later date without either (i) or (ii) occurring. The extent of the proposed lease cannot be greater than necessary to provide coal for five years in the future at the average annual level of production existing as of September 27, 1977; or

(3) when the Secretary determines to issue the proposed lease under the provisions of Section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 in exchange for a federal coal lease in an alluvial floor, except that no lease may be issued under this paragraph in exchange for a federal lease held by an applicant who is not entitled to have its surface mining permit approved under Section 510(b)(5) of the Act; or

(4) when the proposed leases will be used to conduct a project authorized by the Administrator of the Energy Research and Development Administration under Section 908 of the Surface Mining Control and Reclamation Act of 1977, and the technology cannot be adequately demonstrated on existing leases or private coal holdings. * * *

(5) [Certain listed pending lease applications.]

454 F. Supp. at 151.

BLM found that the emergency criteria established in National Resources Defense Council for issuing Federal coal leases were controlling. It further found that the proposed leases did not meet any of the exceptions in the court's decree since the leases would be the subject of new mining operations. Accordingly, the lease applications were rejected.

In his appeal, appellant was not able to show error in BLM's finding that his lease applications do not meet the emergency leasing criteria set out in N.R.D.C. v. Hughes, supra. Appellant, however, argues that his application for the leases should not be denied based on the September 27, 1977, National Resources decision because his applications should have been processed prior to the National Resources Defense Council suit. Among other arguments, appellant contends that relief should be granted, since to deny him the leases would in effect deprive him and others of an opportunity to work, in addition to depriving the nation of much needed coal. He states that his applications should have been included among those pending applications individually authorized by stipulation and order under National Resources Defense Council.

[1] The court order restricting the Department's issuance of coal leases expired upon the review and implementation by the Secretary of the Interior of a new Federal coal management program. Regulations governing this new program were issued effective July 19, 1979. See 43 CFR Part 3400 (44 FR 42609 (July 19, 1979)). Therefore, it is appropriate to vacate BLM's decision and remand appellant's application to BLM for further consideration to determine whether the leases should be issued under the new coal management regulations. Coal Fuels-Wilde, 43 IBLA 170 (1979). If additional documentation is needed before a determination can be made under 43 CFR 3425.1-8 (44 FR 42626-27 (July 19, 1979)), Johnson will be given 30 days from receipt of notification from BLM to supply additional information in support of his applications.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the matter is remanded for appropriate action.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge